IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Lalita vs. The District Judge & ors.

S.B. Civil Writ Petition No. 5098/2005 under Article 226 of the Constitution of India.

Date of Order: April 04 ,2006.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. M.C. Bhoot for the petitioner.
Mr. J.P. Joshi & Mr. J.K. Bhaiya for the respondent.

BY THE COURT:

At the request of the learned counsel for the parties, petitioner and respondents decree holders' writ petition is heard finally as in the petition order is challenged by the petitioner which is in favour of the respondent decree holders only.

It will be beneficial rather say necessary to narrate the facts of civil suit No. 369/1994 filed by the respondent-landlord's predecessor Smt. Satwant Kaur against Dhundh Singh's (originally-tenant) descendants who are also respondents in this writ petition. Said Smt. Satwant Kaur filed the suit No. 369/1994 for eviction of her tenants

wherein decree for eviction was passed against the defendant-tenant by the trial court on 5.12.1999 and appeal against the said decree was dismissed by the first appellate court by judgment and decree dated 15.7.2003 and thereafter, second appeal was dismissed by this Court by judgment dated 19.9.2003 and ultimately special leave to appeal was dismissed by the Hon'ble Supreme Court by order dated 19.4.2004.

Civil Original Suit No.369/1994

The plaintiff Satwant Kaur filed Civil Original Suit No.369/1994 for eviction against the tenants with the allegations that the suit property was initially let out to one Dhundh Singh on 5.9.1966 on rent of Rs.200/- per month. Dhundh Singh was doing the business of tent house in the suit premises. He died on 13.8.1991. Dhundh Singh's legal representatives did not pay the rent of the suit property from 1.4.1991 and more than three years passed to that, therefore, the tenant became the defaulter in payment of rent. On this ground decree for eviction was sought by the plaintiff. Another ground taken by the plaintiff Smt.Santwant Kaur was that the suit property is required because of the personal bona fide necessity of the plaintiff's son. The detail facts are not relevant about the need of the plaintiff's son. To show that there will be no hardship in case decree for eviction is passed against the legal representatives of the original tenant,the plaintiff submitted that defendant no.1 got the plot measuring 60 ft x 40 ft. and constructed five

shops over it which have been let out by him and the defendant also got the area of 10,000 sq.ft. where they are doing their tent business. On these grounds, the plaintiff Smt. Satwant Kaur filed suit no.369/94 against legal representatives of Dhundh Singh.

The defendants submitted written statement with the pleas that in fact the rent was not accepted by the landlord from the month of April, 1991 despite tender of the rent by the defendants. When the plaintiff did not accept the rent, the defendant no.2 and 3 sent rent through money order for the period April, 1991 to September, 1991 on 17.10.1991. The landlord Smt.Satwant Kaur did not accept the rent sent by the money order then the defendants sent pay order dated 23.10.1991 of Rs.1200/- along with a registered letter to the plaintiff which too was not accepted by the landlord Smt.Satwant Kaur. Thereupon the defendants gave a notice through their advocate to the plaintiff on 30.10.1991 asking the plaintiff to disclose her bank account number so that the rent may be deposited in the bank account which is permissible under the provisions of Section 19A of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short “the Act of 1950”). hen the plaintiff did not respond to the defendants' notice then the defendants started depositing the rent under Section 19A of the Act of 1950.By this the defendants already deposited rent for the shop in dispute upto March, 1995 whereas the suit was filed on

20.10.1994.According to the defendants, the defendants have not committed default in payment of the rent. The defendants seriously contested about the alleged need of the plaintiff's son and took a plea that in the life time of Dhundh Singh, a suit for eviction was filed by the landlord which was dismissed by the trial court on 16.4.1977. However, the appeal was allowed by the first appellate court and defendant no.2 to 5 preferred second appeal before the High Court which was allowed by the High Court and in that decree, the part of the shop measuring 14 ft x 14 ft was delivered to the plaintiff for the business of the plaintiff's son. The defendants emphatically submitted that they are doing business of the tent house in the suit shop.

After more than five years of the trial, the suit of the plaintiff was decreed by the trial court by the judgment and decree dated 15.12.1999. The defendants, legal representatives of original tenant Dhundh Singh, preferred regular first appeal no.19/2000 which was dismissed by the court of Addl. District Judge No.1, Udaipur on 15.7.2003. Not satisfied with the decree of dismissal of the appeal of the defendants, the defendants preferred S.B. Civil Second Appeal No.221/2003 before this Court which was dismissed by this Court on 19.9.2003. At the time of dismissal of the appeal of the defendants, a request was made on behalf of the defendants that some time may be granted to the defendants to vacate the suit premises, upon which this

Court granted time to the defendants to vacate the suit premises by 31.3.2004. For this indulgence, a condition was put by this Court that the defendants shall submit a written undertaking before the trial court that the defendants shall handover the vacant possession of the property in dispute to the respondent by or before 31.3.2004 and shall also pay entire decreed amount as decreed by the courts below as well as the costs of the second appeal and shall further pay all arrears of rent if due and rent month by month till the tenants vacates the suit premises.

The defendants submitted written undertaking in pursuance of this Court's judgment dated 19.9.2003 passed in S.B.Civil Second Appeal No.221/2003 before the trial, i.e., in the court of Civil Judge (Jr.Div.), City (South), Udaipur, copy of which is placed on record of the present writ petition by the respondent legal representatives of the original plaintiff Smt.Satwant Kaur.

The defendants after furnishing that undertaking before the trial court filed special leave to appeal before the Hon'ble Apex Court but could not get the stay order in their favour. The defendants submitted an application in S.B. Civil Second Appeal No.221/2003 for extension of time for vacating the suit shop. The application was registered as S.B. Civil Misc. Application No.23/2004. Time was sought on the ground that defendant-tenant’s S.L.P.is likely to be listed before the Supreme Court

on 2.4.2004 and the defendants-tenants are hopeful that they may get stay order from the Hon’ble Supreme Court. This Court granted further time to the defendants by order dated 12.4.2004 and extended time for vacating the suit premises up to 20.4.2004. On 19.4.2004 special leave to appeal (Civil) 23491/2003 preferred by the defendants was dismissed by the Hon'ble Apex Court. However, the Hon'ble Apex Court also granted more time to the defendants to vacate the suit shop which is, by 31.10.2004.,on the defendants' furnishing usual undertaking within two weeks from the order of the Hon'ble Apex Court .To take the benefit and to protect the possession, the defendants submitted further written undertaking before the trial court in pursuance of the order passed by the Hon'ble Apex Court on 19.4.2004 wherein the defendants unequivocally further submitted that the appellant shall hand over the vacant possession of the suit shop to the landlord on 31.10.2004 and shall pay the cost of the appeal and arrears of rent. This undertaking is dated 1.5.2004.

Despite all above facts and furnishing of undertaking by the defendants(admitting themselves to be tenant in possession), in pursuance of this Court's judgment dated 19.9.2003 and further in pursuance of the order of the Hon'ble Apex Court dated 19.4.2004, the possession was not delivered to the landlord by the defendants. The above facts are relevant because objection petition has been filed

against the execution of the same decree passed in C. O. No. 369/1994 and upheld up to Supreme Court. The petitioner Lalita's claim is that she is wife purchaser of the business of above tenants and is tenant in occupation of the suit shop and she is not bound by the decree passed in Civil Original Suit No.369/94 dated 15.12.1999 and, therefore, the said decree cannot be executed.

Claim of Smt.Lalita-petitioner

Smt.Lalita firstly, filed the civil suit in the court of District Judge, Udaipur on 29.4.2004. Copy of the plaint submitted by the respondent as Annex. R.3/10. The petitioner Lalita in her suit, admitted that the defendants in the suit no.369/94 were tenants in the suit shop on monthly rent of Rs.200/- per month and she also admitted that they were doing the business of tent house. She also admitted that the said business was from the time of Dhundh Singh's ancestor of the judgment-debtors of the above suit. According to Smt.Lalita, the defendants of suit no.369/94 were not interested in continuing with the business of tent house and ultimately they sold their business to plaintiff's husband deceased Aryan Lal. It was done with the consent of decree-holder Smt. Satwant Kaur. She agreed that she will let out the suit shop to Smt.Lalita's husband Narayan Lal on monthly rent of Rs.350/-. In these circumstances, deceased Narayan Lal purchased all goods of the tent house from the heirs of deceased Dhundh Singh and rent deed was

executed for the suit shop between Smt.Satwant Kaur and Lalita's husband Narayan Lal on 10.9.1992. Original of the rent deed was kept by Narayan Lal and copy was given to Smt.Satwant Kaur. According to Lalita, Smt. Satwant Kaur, the landlord took Rs.20,000/- as advance rent from Narayan Lal and handed over possession of the suit shop to Narayan Lal. Rs.19950/- was adjusted against the rent up to the period 31.5.1997. The remaining Rs.50/- was adjusted against the rent of next month and rent for the month of June, 1997, Rs.350/- was paid to Smt.Satwant Kaur. Thereafter, according to said Lalita, rent of the suit shop was regularly paid to Smt.Satwant Kaur. However, according to the plaintiff no receipt was given by Smt. Satwant Kaur for the rent which she received. Narayan Lal died on 11.8.1999. Smt. Lalita stated that from the life time of her husband she was also used to sit in the shop and was doing the business with her husband, therefore, she became the tenant in the suit shop. According to Lalita in the last days of month of March and in the beginning period of April, she came to know from the neighbour shop-keepers that some litigation is going on in between Smt. Satwant Kaur and the legal heirs of Dhundh Singh, upon which Lalita enquired and found all facts relating to suit no.369/1994 and appeals against the judgment and decree passed in appeal At this stage, it will be worthwhile to mention here that as per the copy of the plaint, the plait bears the date 19.4.2004 whereas by the order of this Court dated

12.4.2004 passed in S.B.Civil Misc. Appeal Application NO.23/2004, the tenants of the suit no.369/93 were supposed to delivered the possession of the suit shop by or before 20.4.2004.

Since Smt. Santwant Kaur died during the pendency of the first appeal against the judgment and decree dated 15.12.1999 passed in Civil Original Suit No.369/94, therefore, the legal representative of Smt.Satwant Kaur were impleaded as defendants in the suit filed by Smt. Lalita along with defendants of the suit no.369/94. The legal representatives of Smt.Satwant Kaur contested the injunction application filed by Lalita in the suit which she filed in the court of District Judge, Udaipur challenging the executablity of the decree for the property in dispute. The legal representatives of Smt.Satwant Kaur when found that Lalita has come with rent deed dated 10.9.1992, they submitted criminal complaint under Sections 420, 466, 467, 471, 474 and 120B,I.P.C. In the court of Judicial Magistrate(South),Udaipur and the complaint was sent to the police station under Section 156(3), Cr.P.C., on which F.I.R. NO.166/2004 was registered. The concerned investigating officer submitted an application before the civil court on 25.8.04 and prayed that the original deed dated 10.9.1992 may be given to the investigating agency so that the same may be examined by the Forensic Science Laboratory. This application was seriously opposed by the Smt.Lalita but the learned Addl.District Judge NO.2, Udaipur on

17.9.2004 ordered that the deed dated 10.9.1992 may be given to the investigating officer for F.S.L. Examination and fixed the date in the case on 20.9.2004. Just after passing the order by the Addl. District Judge No.2, Udaipur, Lalita's advocate submitted an application that the plaintiff Lalita is proposing to prefer writ petition to challenge the order of the learned Addl.District Judge No.2, Udaipur dated 17.9.2004, therefore, the original document may not be handed over to the concerned S.H.O. On this application, the court granted one months' time to Smt. Lalita for obtaining the stay order from the High Court against the order dated 17.9.2004. It has not made clear whether said was challenged or not but it is clear that said order of the trial court was not set aside by any court.

In the suit filed by Smt.Lalita (present petitioner), the trial court by a detailed order dated 19.10.2004 dismissed the present petitioner's injunction application. It appears from Annx. R.3/13 that F.S.L. examined the deed dated 10.9.1992 set up by Smt.Lalita-petitioner and opined that the signatures in question are forged one. On 27.10.2004, the present petitioner submitted an application before the trial court seeking permission to withdraw the suit which was seriously objected by the legal representatives of Smt.Satwant Kaur, decree holders but it was submitted on behalf of the petitioner that since the petitioner is withdrawing the suit unconditionally, therefore, even no cost be

imposed against the petitioner but the trial court permitted the petitioner-plaintiff to withdraw the suit and awarded cost of Rs.2000/- to the contesting defendants legal representatives of Satwant Kaur.

Petition u/o 21 Rules 97 and 98,C.P.C.

After all above proceedings and particularly after unconditional withdrawal of the suit by the present petitioner, the petitioner submitted an objection petition under Order 21 Rules 97 and 98,C.P.C. to resist the issuance of possession warrant in execution of the same decree dated 15.12.1999 passed in Civil Original Suit NO.369/94 on the same facts and ground which were the facts and grounds pleaded by the petitioner in her suit which was withdrawn by her unconditionally. The objection petition was seriously contested by the decree holders. However, the executing court did not frame point for determination, therefore, aggrieved against the order of the executing court dated 1.2.2005, to proceed without framing any point for determination, the petitioner Smt.Lalita preferred S.B.Civil Writ Petition No.928/2005 which though was dismissed by this Court but with some observations, upon which the petitioner Smt.Lalita submitted an application under Section 151, C.P.C. before the executing court and prayed that point for determination may be framed and the petitioner may be permitted to produce oral evidence. The executing court framed the point for determination on 8.4.2005. The petitioner also submitted an application

under Order 39 Rules 1 and 2, C.P.C. before the executing court and sought stay of execution of the decree dated 15.12.1999 passed in suit no.369/94. Said application was allowed by the executing court by order dated 15.4.2005. The decree holders legal representatives of the original plaintiff Smt.Satwant Kaur preferred appeal against the order of the executing court dated 15.4.2005 which was allowed by the learned District Judge, Udaipur by a detail order dated 18.8.2005. Hence this writ petition has by the petitioner Smt.Lalita objector, objecting the issuance of the possession warrant for taking possession of the shop in dispute in execution of the decree dated 15.12.1999 passed in Civil Original Suit No.369/94.

The learned counsel for the petitioner relying upon several judgments of Hon'ble Apex Court and of this Court, vehemently submitted that once an objection petition is filed by the person in possession of the property for which the decree is sought to be executed then if the said objector is not party in the suit and is not bound by the decree, the possession warrant cannot be issued. According to the learned counsel for the petitioner, admittedly the decree was passed not against the petitioner and the petitioner is in possession of the shop in dispute, therefore, the petitioner is not bound by the decree. Till the petitioner's right, title and interest in the suit property are decided, the executing court cannot issue warrant for possession so as to evict the

petitioner from the shop property. According to the learned counsel for the petitioner, the entire scheme as provided under the heading of "Resistance to delivery of possession to decree holder or purchaser" and under Rules 97 to 106, it is clear that the complete procedure has been given in these rules for proceeding by the executing court where third party has raised objection against the issuance of possession warrant. As per sub-rule (2) of rule 98, once decree is resisted or obstructed by any person, the court can only proceed to decide and adjudicate upon the issues raised by the objector in the light of the pleas taken by the decree holders and there is no provision under any of the rules which provides that simultaneously the executing court can issue possession warrant. The learned counsel for the petitioner vehemently submitted that unless and until rights of the objector are decided, the decree cannot be executed to evict the objector. The learned counsel for the petitioner vehemently submitted that in fact all rights and questions about the title and interest in the property claimed by the objector can only be decided under Rules 97, 98, 99 and 101 and not in a separate suit. Any order passed under these rules is decree as provided under Rule 103 of Order 27, C.P.C. Therefore, it will be unjust to oust a person in possession claiming his/her right, title or interest in the property during investigation of his/her claim. The learned counsel for the petitioner also submits that same is the view taken by the Hon'ble Apex

Court also in the various judgments as well as by this Court also in subsequent judgments. According to the learned counsel for the petitioner, in this case, the objection petition has been entertained by the executing court and the executing court has framed the issue for trial. The objection petition can be decided on the basis of the affidavit or by some summary procedure as held by the Hon'ble Apex Court, therefore, during this enquiry, the possession warrant cannot be issued by the executing court in any case and particularly in this case where so many issues have been framed by the executing court and the executing court is proceeding to decide the issues.

The learned counsel for the respondents decree holders vehemently submitted that this is a clear case of abuse of process of the court by the petitioner in collusion with the judgment and debtors of civil original suit no.369/94 which is apparent from the facts and of which full cognizance has been taken by the civil court in the suit filed by the petitioner herself wherein the civil court dismissed the petitioner's application for grant of injunction by detailed order dated 19.10.2004. By withdrawing that suit in which petitioner’s prayer for same injunction was refused the petitioner can not put herself in better position. The no civil or other court can ignore the fact of dismissal of petitioner’s earlier application for grant of injunction against execution of the decree passed in C. O. 369/1994. Not only this that the

petitioner's case is totally false and concocted but from the facts of the case it is clear that the legal representatives of the original tenant Dhundh Singh tried their best to keep the possession by contesting suit no.369/94 for five years in the trial court and thereafter they preferred first appeal, second appeal and sought time from this Court for vacating the suit premises twice and submitted written undertaking before the trial court admitting that they are in possession of the suit property and will handover the vacant possession of the suit property to the decree holders. Not only this but the same judgment debtors preferred special leave to appeal petition before the Hon'ble Apex Court and there also they sought time for vacating the shop in dispute and they furnished undertaking before the civil court that the judgment debtors will deliver the possession of the suit property to the landlord on or before 31.10.2004 but the possession has not been delivered to the decree holders till today. Thereby, the judgment debtors have flouted the courts' orders and breached their undertaking given in pursuance of the order of the High Court and of the Hon'ble Supreme Court in this matter So far as the petitioner's case is concerned, the petitioner's alleged deed dated 10.9.1992 has been found by the F.S.L. to be forged one and admittedly the petitioner has no rent receipt for the suit shop from Smt.Satwant Kaur or successor of Smt. Satwant Kaur. Not only has this, the timings exposed the petitioner and the judgment debtors. The

judgment debtors sought time from this Court to vacate the suit premises, second time by moving application for extension of time, upon which this Court granted time to vacate the suit property by 20.4.2004 and Lalita filed the suit before the District Court on 29.4.2004. It is apparent from the copy of the plaint that suit was in fact drafted (a day before to time for vacating the shop) and was ready for filling on 19.4.2004 but it appears that on 19.4.2004 the time was extended by the Hon'ble Apex Court for vacating the suit premises and, therefore, it appears that the suit was not filed on 19.4.2004 or on 20.4.2004. On factual aspects, learned counsel for the respondents decree-holders, vehemently submitted that in this case, admittedly there is no evidence for name shake on the basis of which the petitioner can claim her possession and in fact the petitioner is none else than the person set up by the judgment debtors because unless there was connivance between judgment debtors and the petitioner, the suit could not have been drafted on 19.4.2004 and would not have been kept in pocket unless the petitioner was informed by the judgment debtors that now there is no urgency for filing the suit. Apart from circumstantial evidence, it is admitted case of the petitioner herself that the suit property was let out to Dhundh Singh's ancestors of the judgment debtors of civil original suit no.369/94. The business is the same. There is no evidence of purchase of the business of Dhundh Singh from the judgment debtors by

the petitioner's husband, therefore, on merits, the petitioner has no case.

The learned counsel for the respondents decree holders vehemently submitted that looking to the conduct of the petitioner and the judgment debtors, the writ petition deserves to be dismissed. However, according to the learned counsel for the respondents, the first appellate court very carefully examined the facts of the case and the executing court committed serious error of law in granting the injunction order.

The learned counsel for the petitioner in rejoinder submitted that in fact there was no need for moving any application under Order 39 Rules 1 and 2, C.P.C. by the petitioner because once the objection petition has been filed and entertained by the court, the executing court itself could not have proceeded to issue possession warrant and in alternative, the application could have been treated under Section 151, C.P.C., and order passed on the said application, no appeal could have been preferred.

I considered the submissions of the learned counsel for the parties and perused the record of S.B. Civil Second Appeal No.221/2003 also.

The thrust of argument of the learned counsel for the petitioner is that once the execution of the decree for possession is obstructed and resisted by a person on the plea that he/she is in possession of the

property in dispute in her own right or having title or has interest in the property then the executing court without deciding the right, title or interest in the property of the objector, cannot issue possession warrant to oust the person in possession. Even no interim order of court is needed. It is automatic stay as rules do not envisage that executing court without deciding the claim of the objector order ouster of the objector. Under order 21 C.P.C., complete procedure is given below heading “Resistance to delivery of possession to decree holder or purchaser” which starts from rules 97 to 106 of Order 21, C.P.C. and rules provide for issuance of possession warrant only after adjudication of objectors claim and not before that. According to learned counsel for the petitioner the strength of above argument has foundation of the various judgments of the Hon'ble Apex Court and of this Court which I shall be dealing now.

The earliest judgment, relied upon by the learned counsel for the petitioner is the judgment delivered in the case of Ibrahim v. Phool Chand (1960 RLW 618). In this case, suit for eviction was decreed by the trial court and when decree was sought to be executed, an objection petition was filed by a person who was not the party in the suit. He claimed that he is in possession of the house as owner. This objection petition itself was rejected by the executing court without investigating his claim on the ground that it is not open to third party to apply for

investigation of his claim under Order 21 Rule 97 C.P.C. and his claim could only be investigated upon application if submitted by the decree holder under Order 21 Rule 97, C.P.C. .This Court in the above judgment held that the court cannot pass an order directing delivery of possession by the use of force unless the decree holder moves an application under Order 21 Rule 97 C.P.C. Therefore, the issue involved in above case was altogether different. In above case the executing court rejected the objection petition itself without entering in to merits and demerits of the objection on the ground that petition under order 21 rule 97 C.P.C. can be filed only by the decree holder and that was found legally wrong by this court. How the court will proceed on objection petition and what type of orders can be passed by the executing court was not at all the point involved in that case. In above case, the issue was not whether the stay of execution is automatic on raising objection against execution by third party. Therefore, High Court's observation in that case is only obiter.

In the case of Noorduddin v. Dr. K.L. Anand ((1995) 1 SCC 242) Hon'ble the Apex Court, took note of the facts that neither the appellant nor his father was a party to the suit or appeal, therefore, the decree per force does not bind him. One **N** was impleaded as one of the respondents but no relief was claimed against him nor a finding adverse to him has been recorded. In these circumstances, the Hon'ble Apex

Court held that when the appellant has been claiming right, title and interest in a specific portion of land from which he was sought to be dispossessed in execution of the decree by **K** (respondent herein) in respect of the land sold to **K**, the executing court necessarily has to go into the question whether the former land is part of the latter and if so, whether the respondent while executing the decree trenched upon his property and sought to dispossess him. In these facts, Hon'ble the Apex Court held that appellant's possession, pending adjudication, needs to be protected by interim orders. The court is enjoined to adjudicate the appellant's claim and record a finding, allowing or rejecting the same. It is to be noticed that Hon'ble the Apex Court clearly held that "appellant's possession, pending adjudication, needs to be protected *by interim orders.*" Meaning thereby for protection of possession of the person in possession can be only the interim order of the executing court. The facts referred above and particularly dealt in para no.10 of the judgment of the Hon'ble Apex Court, it is clear that the Hon'ble Apex Court found that a case has been made out for adjudication of the issue on the basis of the claim of the objector and, therefore, on the facts of the said case, stayed the dispossession till adjudication of the claim of the objector. The finality of the order in the said rules decides right, title or interest of the parties in the immovable property finally. This is equivalent to suit proceedings. But till those right, title or interests are

decided, how the executing court can proceed, is a separate matter like in regular civil suit also right, title and interest of the parties are decided finally but that doesn't mean that once suit has been entertained it will operate as stay or injunction as the case may be. It is relevant to mention here that in case the objector fails in establishing his right, prima facie, before the executing court and is dispossessed in execution of the decree, he can get possession back on proving his right, title or interest in the property in the same proceedings under Order 21 Rule 98 C.P.C.which is clear from the Rule 100 of Order 21, C.P.C. The order which can be passed on the petition under Rules 97 and 99, both require determination of the question, in Rule 101 only and then in the same petition filed under Order 2 Rule 97,C.P.C., he can get possession back after the order is passed by the executing court under Rule 100,C.P.C.

Heavy reliance has been placed by the learned counsel for the petitioner on the decision of the Hon'ble Apex Court delivered in the case of Brahmdeo Chaudhary v. D.Rishikesh Prasad Jaiswal and another ((1997) 3 SCC 694. The facts of above case are that respondent 1, filed a suit for eviction of respondent no. 2 and his mother from the suit land. A decree was passed in favour of respondent no. 1 against the judgment-debtor respondent no. 2 by Court of Munsif. Respondent no.1 filed execution proceeding against respondent no. 2 and obtained a warrant

for delivery of possession from the execution court against respondent no. 2. When the bailiff went on the spot to execute the warrant for possession he was resisted by the appellant as well as his brothers. Under these circumstances the decree-holder by his application dated 6.5.1991 requested that help of a magistrate and armed force be made available at his cost for execution of the decree. The executing court directed execution of the warrant for possession by affording help of police force to the decree-holder. The appellant filed a written application on 22.1.1996 before the executing court to stay operation of the said warrant and to decide his objection. By a rejoinder respondent decree-holder raised the question of maintainability of said application before handing over actual possession to the decree-holder. The executing court without adjudicating upon the objections of the appellant on merits and without deciding whether the obstruction or resistance offered by him was legally justified or not dismissed the appellant's application dated 22.1.1996. The executing court took the view that the remedy of the appellant was to move an application under Order 21, Rule 99 CPC only after he was dispossessed and as that stage was not still reached the request of the appellant to adjudicate his claim could not be entertained. That order of the executing court was confirmed by the High Court. Matter came before Supreme Court by way of appeal by special leave the appellant posted the short question viz.

“Whether the appellant who claims to be a stranger, occupying decretal premises in his own right and who has offered resistance to the execution of the decree obtained by the decree-holder against the judgment-debtor qua such property cannot request the executing court to adjudicate upon his resistance and obstruction without being insisted upon that first he must hand over possession and then only move an application under Order 21, Rule 99 Code of Civil Procedure?” The Hon'ble Apex Court in the above facts held that:-

> “Under Rule 35 of Order 21 CPC a warrant for possession can be straightaway sought against persons occupying immovable property which is the subject-matter of decree by the decree-holder provided such persons who are occupying the suit property are judgment-debtors or persons claiming through the former.

The Hon'ble Apex Court also held that:-

> “Once resistance is offered by a purported stranger to the decree and which comes to be noted by the executing court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order 21 Rule 97,C.P.C., sub-rule (1) and he cannot bypass such obstruction and insist on reissuance of warrant for possession under Order 21, Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order 21 Rule 97,C.P.C. in connection with removal of obstruction of purported strangers to the decree.”

More reliance has been placed on this portion of the judgment where Hon'ble the Apex Court held:-

> “Once such an obstruction is on the record of the

> executing court the executing court cannot tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order 21 Rule 99 CPC and pray for restoration of possession."

It is also submitted that Hon'ble the Apex Court in the above judgment Brahmdeo Chaudhary's case (supra) observed that when such a lis arises, it has to be adjudicated upon as enjoined by Order 21, Rule 97 C.P.C. and after hearing the decree-holder and obstructionist the court can pass appropriate order after adjudicating upon the controversy between the parties. The reason for holding as above by the Hon'ble Apex Court is given in para no.9 of the judgment. Hon'ble the Apex Court held that otherwise it will result in patent breach of principles of natural justice as the obstructionist , who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard on merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard.

The reasons given in para 9 of the judgment, quoted above, make it clear that obstructionist cannot be thrown out without giving an

opportunity of hearing. Therefore, the obstructionist has only right to get the opportunity of hearing before warrant of possession can be issued against him. This opportunity he gets when he is heard on his prayer for interim order. Hone'ble Sumpreme Court in the case of Noorduddin v. Dr. K.L. Anand ((1995) 1 SCC 242) (supra) clearly declared that to possession of the obstructionist can be protected by interim order of the court only ("appellant's possession, pending adjudication, needs to be protected *by interim orders.")* Judgment of the Hon'ble the Apex Court nowhere says that till the executing court "finally decides" the claim of the objector the court cannot look in to prima fecei merit of the obstructionist's claim and the decree holder shall have no right to show the un-tenability of the claim of the obstructionist. The judgment referred above Brahmdeo Chaudhary's case (supra) can not be read to mean that the decree holder shall have no right to show that the claim of objector is frivolous and bogus from the facts pleaded by the objector himself or from the facts which are on record of the court or which have been brought on record by decree holder no case is made out for staying the decree holder's execution petition. This right of decree holder cannot be taken away. If this right of the decree holder is denied, it will be violative of principle of natural justice by denial of opportunity before passing adverse order against the decree holder. Another serious repercussion of it will be that the

objector will be put in better position than any plaintiff of suit seeking same relief of stay of execution. The objector, who otherwise would have to file the suit for determination of his right, title or interest in the suit property, if it would not have been barred by provision made under order 21 C.P.C., shall stand in better position than the plaintiff in the suit for the same relief simply because the procedure for such determination has bee provided under the chapter dealing with execution of the decrees in C.P.C. Mere filing of the suit would not have stayed the execution nor he would get stay order without proving issues; prima fecie case, irreparable injury and balance of convenience, in his favour after giving opportunity of hearing to the decree holder. This view will result in to holding that in the suit on the same set facts, the civil court having wider jurisdiction, would have refused stay of execution but when it is in form of objection against execution of possession warrant in execution, the court shall have no jurisdiction to refuse stay. It will be mockery of the law if execution of the lawfully obtained decree is stayed merely because it is being resisted by any one and that too after denying the decree holder his right to show that there is no prima facie proof in support of claim of the obstructionist or the claim is farce or claim is result of collusion between the judgment debtor and the obstructionist.

In fact objection petition under order 21 rule 97 C.P.C. is

proceedings substitute of suit and is a lis between two rival claimaints. There are claims of two persons, one founded upon decree holders right flowing from the decree for possession and another is right of objector to the execution and who is in possession of the decretal property claiming his right, title or interest in the property in dispute. The opportunity of hearing to obstructionist may be a valuable right but right of the decree-holder to execute the decree is not less in any manner. The obstructionist has right to pray for adjudication on his claim and the decree holder has right to contest the claim of the obstructionist. That adjudication may require enquiry, may it be summary in nature or detail, if the claim is not rejected by the court summarily (which is normally difficult for the executing court). In regular civil suit, plaintiff cannot made to suffer merely because determination of issues and suit sufficient time will be needed. Therefore, the plaintiff can ask court to protect his rights during pendency of the suit. The court passes interim order; staying the action or may refuse stay, but after hearing both the parties to lis. The same is the procedure in petition under order 21 rule 97 C.P.C.. The final determination of issues raised in objection petition may take time. Till its final determination, the obstructionist's rights are required to be protected but only if case is made out for such protection. And obstructionist can obtain stay or injunction order only after proving his

case as required in proceedings under order 39 rule 1 & 2 C.P.C.. Right of decree holder of submitting his case and showing the falsity in the case of the obstructionist is also not less than the right of the obstructionist. In the light of the judgment of the Hon'ble Apex Court in the case of Brahmdeo Chaudhary, the obstructionist can claim only opportunity of hearing before warrant for possession can be issued. That opportunity he gets when he is heard on his prayer for interim order. By petition under order 21 rule 97, he only seeks final adjudication on his claim and for interim order, he is required to pray for that, with reasons and grounds for interim order. It will be relevant to mention that Hon'ble the Apex Court in the case of Brahmdeo Chaudhary itself clearly held that possession warrant under Rule 35 of Order 21 can be straight sought against persons occupying immovable property which is the subject-matter of decree obtained by the decree-holder provided such persons who are occupying the suit property are judgment-debtors or persons claiming through the former. The person claiming through the judgment-debtors are normally not named in the decree, still they are bound by the decree and the possession warrant can be issued against the persons claiming through the judgment-debtors. Whether the person is claiming through the judgment debtor or not is a question of fact and that can be made clear by the decree-holder after admitting that the person not named in the decree is in possession, therefore, if all persons

who are not named in the decree, will be allowed to raise objection then the decree-holder will not be in position to show the executing court that the person in occupation though has not been named in the decree but in fact he entered in to the property through the judgment-debtor only.

Hon'ble the Apex Court in the case of Silverline Forum Pvt. Ltd. vs. Rajiv Trust and another ((1998) 3 SCC 723), which was relied upon by this Court in the case of Vijay Singh Bhati vs. Rajasthan Board of Muslim Wakf (S.B.Civil Revision Petition No.94/1997 decided on 4.11.2003), held as under:-

> "A third party to the decree who offers resistance or obstruction to execution of the decree would fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree."

In this case, Hon'ble the Apex Court while considering Rule 97 of Order 21, C.P.C. Held as under:-

> "When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. The words "all question arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such question should have legally arisen between

> the parties, and the second is, such questions must be relevant for consideration and determination between the parties .e.g., if the obstructor admits that he is a transferee *pendente lite* it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. In the adjudication process envisaged in Order 21 Rule 97(2) of the code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section. The executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code."

The Hon'ble Apex Court further held:-

> " The adjudication mentioned in Order 21 Rule 97(2) need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary."

In the light of the decision of Hon'ble Supreme Court in the above case of Silverline Forum Pvt. Ltd., the executing court is required to decide such questions which legally arise between the parties and the questions must be relevant for consideration and determination between the parties and in the case referred above, same questions are absolutely irrelevant while adjudicating petition under Order 21 Rule

97,C.P.C.. This also suggests that the executing court may look into the facts of the case before proceeding on petition under Order 21 Rule 97,C.P.C. and during the proceedings pending under Order 21 Rule 97,C.P.C.

Yet another judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner is in relation to the same controversy which is given in Anwarbi v. Pramod D.A. Joshi & ors. ((2000) 10 SCC 405). In this judgment details facts are not available about the merit of the case of the obstructionist but since the executing court dismissed the applications of the obstructionist on the ground that the applications are pre-mature as she is in possession, therefore, following the earlier judgments of the Hon'ble Apex Court held that the rights of the obstructionists are required to be decided in appropriate proceedings in accordance with law. This judgment also is not dealing with the point whether interim orders are required for protecting possession or whether on submitting a petitioner under Order 21 Rule 97,C.P.C., the executing court cannot issue warrant for possession against the person in occupation merely on the ground that he has not been shown as judgment-debtor in the decree. In the judgment of the Hon'ble Supreme Court delivered in the case of Prasanta Banerji (supra), by brief judgment Hon'ble the Apex Court only held that the appellant is allowed to raise all lawful objections against the execution of the

decree.

It will be also worthwhile to consider the judgment of this Court delivered in the case of Balraj Singh & anr. vs. Ajit Singh (2004(4) WLC (Raj.) 85), wherein the learned Single Judge of this Court held that:-

> "Adjudication mention in Order 21 Rule 97(2) C.P.C. need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resistor and the Court can direct the parties to adduce evidence for such adjudication if the Court deems it necessary."

This Court also held that that:

> "In investigating the matter under Rule 97, the Court is only concerned with the fact whether the obstructionist is claiming under the judgment-debtor or not, if not, the Court has to dismiss the application under Rule 97 and the Court is not concerned to see in what title the obstructionist was claiming."

In this case also, it was not the issue whether pending adjudication on issue raised in petition under Order 21 Rule 97,C.P.C. unless the court decides to stay its hands from issuing warrant for possession by a specific order after hearing the obstructionist and the decree holder.

Lastly the judgment of the Hon'ble Apex Court in the case of Kazi Akeel Ahmed vs. Ibrahim and another ((1996) 8 SCC 372) is also relevant. The facts of this case are very relevant for the purpose of

deciding this writ petition. The shop in question in that case was belonging to the appellant, was let out to one Hafiz Abdul Samad. The appellant obtained a decree for possession of the shop in question on 12.7.1971, against Hafiz Abdul Samad, the predecessor-in-interest of Respondent no. 1 herein. The appellant filed execution of the said decree for possession which was dismissed in default on 4.8.1978. Consequently, the appellant moved another application on 6.5.1981 for execution of the decree with an application for police aid. The executing court by its order dated 15.11.1981 issued warrant of eviction with police help. Respondent 2 resisted the execution of warrant for possession and made an application before the execution court under Order 21 Rule 97 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as "the Code") claiming himself to be the tenant of the appellant. The executing court directed an enquiry into the said application of Respondent 2. The appellant approached the High Court in revision challenging the said order of the executing court directing an enquiry into the application of objector/Respondent 2. The High Court by its order dated 26.2.1985 disposed of the revision with the observation that if the person resisting the execution of decree had any right or interest independent of the judgment-debtor he will have a right to obstruct or resist the execution of decree in accordance with the provisions of Order 21 Rule 97 of the Code and in that event an

enquiry would be made. Thereafter Respondent no. 2 Girraj instituted a civil suit on 16.8.1985, being Civil Suit No.539 of 1985, for injunction and declaration to the effect that he was occupying the shop in question as a tenant of the appellant and, therefore, he could not be dispossessed from the shop in question in execution of decree against the predecessor-in-interest of Respondent no. 1. He also made an application for grant of temporary injunction. The civil court found no prima facie case in favour of Respondent no. 2 and, therefore, rejected his application for temporary injunction. An appeal against the said order was dismissed by the Additional District Judge and the said order was maintained in revision by the High Court. After all above, the appellant filed a fresh application for issuance a warrant of possession with police help. Though the claim of respondent no.2 was rejected by the court, though on only application for grant of injunction upto High Court, the executing court still rejected the appellant's application for issuance of warrant of possession with police help. The order of the executing court dated 24.8.1990 in the said case was challenged before the High Court by filing revision petition which was also dismissed by the order dated 24.11.1992 affirming the order of the executing court in regard to determination of the right of Respondent no. 2 in the disputed shop against which appeal was preferred by the appellant decree-holder before the Hon'ble Supreme Court.

The facts of this case of Kazi Akeel Ahmed are identical to the facts of the present case and it may be recapitulated here that the present petitioner also instituted civil suit no.369/94 and her application for grant of temporary injunction was dismissed by the civil court and she unconditionally withdrawn the suit itself whereas in the case of Kazi Akeel Ahmed(supra), there is a reference of rejection of injunction application. It appears from the facts mentioned in para 7 of that judgment that ultimately suit of the said obstructionist was dismissed on 2.11.1995. Hon'ble the Apex Court took serious note of these facts and held as under:-

> " It is true that when an application under Order 21 Rule 97 of the Code is made, it contemplates an investigation into the claim made in the application, in accordance with the provisions contained in Rule 98 and the rules following thereafter. But in the special facts and circumstances of the present case, we see no reason to hold such an enquiry or investigation as the same would be a futile exercise in view of the fact that civil suit instituted by Respondent 2 Girraj making the same claim as has been made by him in his application under Order 21 Rule 97 has been dismissed by civil court on 2.11.1995. A perusal of the said judgment goes to show that Respondent 2 Girraj was unable to produce any evidence, oral or documentary, to prove that he was holding the shop in question as a tenant in his own rights. These facts clearly go to show that the claim of Respondent 2 that he is a tenant is wholly fictitious and without any foundation and it was for this reason that the suit had been dismissed with costs to the tune of Rs.2000. Having regard to these facts and circumstances, we find absolutely no merit in the application of Respondent 2 resisting the execution of the decree validly passed by a competent Court of Law."

It is clear from all above judgments that the point which is sought to be advanced by the learned counsel for the petitioner was nor directly involved in the above . In all above cases, only question involved was whether the third person claiming himself to be in possession of the suit property in his own right, can submit the petition under Rule 97 of Order 21, C.P.C. Or not. The other question involved was whether unless and until the decree is executed and the person is dispossessed, can he submit objection against issuance of possession warrant on the strength of his right, title or interest in the property or on the ground that he is not bound by the decree. The earlier view of this Court that the petition under Order 21 Rule 97,C.P.C. can be filed only by the decree holder and not by the judgment debtor or by third party, has been overruled in the light of the various judgments of the Hon'ble Apex Court, therefore, the objection petition filed by the petitioner claiming herself to be in possession of the suit property having her right and interest in the suit property was maintainable and has not been rejected by the executing court. Since it is not the case of even decree holders that objection petition be dismissed, therefore, the judgment relied upon by the learned counsel for the petitioner on this point have no relevance in the facts of the present controversy because the question involved in this writ petition is only whether the possession warrant can be issued in a case where the objection petition has been

filed and has been entertained by the executing court and there the point for determination has been framed by the executing court or the execution of the possession warrant stands automatically stayed on court's coming to know about the resistance by third party and objection against the execution of the possession warrant. Further question involved is that whether the scheme of the rules suggests that the executing court takes steps only as suggested by the learned counsel for the petitioner that till objections are decided, the court cannot issue possession warrant in the execution of the decree for possession.

The Civil Procedure Code was amended and as per rule 101 all questions arising between the parties including the question relating to right, title or interest in the property can be decided by the executing court alone where any application is submitted under rule 97 by any person, not dispossessed or if dispossessed in execution of the decree may submit petition under rule 99. As per rule 103 of Order 21, the orders passed under rules 98 and 100 are to be treated as decrees and again as per rule 101, no separate suit is maintainable for the purpose of adjudication on the questions which can be raised by the objector under rule 97 or rule 99 of Order 21, C.P.C. The said orders are made appealable as decree. Therefore, in fact, the petition under rule 97 and rule 99 of Order 21 is nothing but substitution of the civil original suit in a case where the court has already passed the decree for possession in

favour of the party in a litigation. It may be otherwise described as proceedings equivalent to proceedings taken for adjudication of question relating to the right, title or interest in the property claimed by the objector and denied by the decree holder. Since there is a decree in favour of decree holder, therefore, the scope in such circumstances has been limited by providing the provisions under the rules of the Civil Procedure Code instead of allowing the parties, particularly, the objector to make his claim as subject matter of another suit.

The court has evolved the procedure by which all above questions can be decided by the executing court and it is not necessary that the executing court should go for detail enquiry or take evidence as is done in a civil suit proceedings. Hon'ble the Apex Court in the case of Silver Forum Pvt. Ltd. vs. Rajiv Trust and another ((1998) 3 SCC 723) held that:-

> "The adjudication mention in Order 21 Rule 97(2) need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary."

Inspite the fact, whether the enquiry is detailed or elaborate order passed in the proceedings are the final adjudication on the question of right, title and interest in the property between the parties

to the proceedings on application under Order 21 Rule 97 or Rule 99 C.P.C. The same view is not altered in any subsequent decision, therefore, the proceedings in a petition under Rule 97 and Rule 99 of Order 21, C.P.C. are nothing but proceedings a par with the proceedings of the suit irrespective of the difference of the procedure adopted in the suit and in the proceedings under Rules 97 and 99. If examined from this point of view, it is settled law that mere filing of suit (which could have been filed before the amendment of the Civil Procedure Code), the proceedings of the execution cannot be treated to be stayed automatically. In the suit, for interim relief, one is required to pray for and obtain the order of the court of law. For obtaining the stay or injunction, against the execution of the decree, one is required to prove his case though prima facie that all ingredients of balance of convenience, irreparable injury are in his favour as require under Order 39 Rules 1 and 2, C.P.C. The objector in execution proceedings cannot be put on higher pedestal than a plaintiff in a suit for seeking the same relief. As suit cannot be dismissed forthwith and without notice to the defendants unless court finds that the suit itself has been filed in the court having no jurisdiction and the court from the plain reading of the plaint found that the suit is barred by law or not maintainable. In the same way, if it is not impossible then it is difficult for the court to dismiss the objection petition filed under Order 21 Rule 97, C.P.C. By

mere reading it because the court in absence of complete facts which can be brought on record by the decree holder, cannot declares the facts alleged by the objector to be wrong and grounds raised by the objector to be unsustainable. Not only this but even when notices are issued on the petition under Rule 97 of Order 21, C.P.C. to the decree holder and reply is filed along with the documents by the decree holder, then it may be difficult for the court to decide the right of the parties finally without evidence. There may be need for further evidence for the purpose of deciding the claim of the objection, then the court may go for detail enquiry and the parties may be allowed to produce evidence by way of affidavits. In case affidavits are filed, the cases may be made out for allowing the cross-examinations of the deponents because of the obvious reason that in case of mere oath against oath without opportunities to cross-examination, it may be difficult for the court to do the justice. In these circumstances and for many other reasons, the executing court may not decide the right, title and interest in the property of the parties and particularly of the objector. Therefore, the executing court while proceeding to determine the question referred above, has been given power to stay the issuance of possession warrant despite the fact that there is no specific rule providing for stay of the execution of warrant under the proceedings taken under Rule 97 of Order 21, C.P.C. The Hon'ble Apex Court in

Nooruddin's case (1995(1) SCC 292) laid down that if the case is made out for staying the issuance of possession warrant, then the executing court itself can stay the warrant for possession. None of the judgment of the Hon'ble Apex Court says that once the objection petition has not been dismissed by the executing court summarily, the executing court shall have to stay the possession warrant. None of the judgment of the Hon'ble Apex Court says that on submitting objection petition by the objector, the executing proceeding shall stand stayed and no possession warrant can be issued. In all the judgments relied upon by the learned counsel for the petitioner, the Hon'ble courts stayed the possession warrant after taking note of the facts of the case and claim raised by the objector. The Hon'ble Apex Court in the case of Nooruddin vs. Dr.K.L. Anand ((1995) 1 SCC 242) clearly held that “the appellant's possession, pending adjudication, needs to be protected by interim orders.” Meaning thereby, the possession of the objector only stands protected if the interim order is passed in his favour obviously on his prayer. The court cannot pass interim order simply on the ground that the objection petition has been filed irrespective of proving the prima facie case, irreparable injury if order is not passed in favour of applicant and balance of convenience because of the simple reason that they are the basis requirement for obtaining the relief and they are more important when, by the order of the court, one wants to deprive

the person having decree in his favour. The court's decrees cannot be taken so lightly as to deny its benefit to the decree holder for mere asking by the objector.

So far as merit of the petitioner's case is concerned, it will be worthwhile to recollect that in the above case of Kazi Akeel Ahmed, the suit was dismissed with cost of Rs.2000/- whereas in this case, even injunction application was dismissed by the appellate court and ultimately the suit of the plaintiff was dismissed with cost of Rs.2000/-. The suit was withdrawn unconditionally is also apparent from the copy of the order dated 5.11.2004(Annx.R 3/15). In this case also obstructionist's claim is that originally the suit property was let out to the ancestor of the judgment-debtors and the petitioner's husband entered into the premises on purchasing the business from judgment-debtors. The obstructionist relied upon the alleged agreement dated 10.9.1992 for which Forensic Science Laboratory, after examination of the documents with permission of the civil court, submitted report that the signatures in question on the said deed are forged one. The facts which are referred above about the previous litigation and the undertaking submitted by the judgment debtors of the case and the time taken in the judicial proceedings for obtaining the decree for possession by the plaintiff decree-holder and the petitioner's claim that she is transferee from the judgment-debtors with a plea of transfer with

the consent of the landlord finding no favour from the first appellate court and all antecedents facts cannot be ignored by this Court as the petitioner is seeking equitable relief under Article 226 of the Constitution of India and this Court has also supervisory power to look into the proceeding throughout between the parties, therefore, this Court is of the firm view that permitting the petitioner to remain in possession for a single moment even during pendency of the petition under Order 21 Rule 97,C.P.C., would amount to abuse of process of court.

This Court constrained to observe that the judgment debtors respondents no.8 to 12 who were before in Civil Original Suit No.369/94, First Appeal No.19/2000, Second Appeal No.221/2003 and thereafter before Hon'ble the Apex Court in Special Leave to Appeal (Civil) No.23491/03, prima facie, willfully breached the undertaking given by them in the court of Civil Judge (Jr.Div.), (South), Udaipur (Annx.3.4 & 5) dated 18.10.2003 and undertaking dated 1.5.2004 (Annx.3/8) dated 29.4.2004 and dated 11.5.2004 (Annx.3/9), which were submitted in pursuance of the order of this Court as well as the order passed by the Hon'ble Supreme Court. The office is directed to register a civil contempt proceeding against respondents no.8 to 12 and place the matter before this Court.

In view of the above discussion, this writ petition deserves to be dismissed and hence dismissed and the judgment of the first appellate court is upheld.

After completion of the judgment, learned counsel for the petitioner prayed that sometime may be granted to the petitioner so that they will hand over vacant possession of the shop to the landlord-respondents by that time. Learned counsel for the petitioner sought three months' time whereas learned counsel for the respondents submitted that in the facts of the case, not more than one month's time be granted.

Looking to the peculiar facts and circumstances of the case and in view of the fact that despite all above observations, the petitioner in court through his advocate conveyed that he will deliver possession of the property in dispute to the landlord, therefore, one month's time is granted from today. In case, the petitioner shall not handover the possession of the suit shop to the decree-holder respondent within one month from today, he shall be liable for proceeding under the provisions for punishing persons for committing contempt of court. Therefore, one month's time is granted to the petitioner to hand over possession of the shop to the decree-holder landlord.

(PRAKASH TATIA),J